Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Notice of Inquiry Concerning Review	)	
of the Equal Access Nondiscrimination	)	CC Docket No. 02-39
Obligations Applicable to Local Exchange	)	
Carriers	)	
	)	
	)	

REPLY COMMENTS OF SBC COMMUNICATIONS INC.

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I. INTRODUCTION AND SUMMARY

It is incredible that almost twenty years after the entry of the Modification of Final Judgment (MFJ) that broke up AT&T's nationwide, vertically-integrated monopoly, and almost ten years after AT&T was found non-dominant in the interexchange market, AT&T argues that the "fundamental need" for the MFJ regulations is as strong today as when the regulations were first adopted. Although AT&T and other BOC (Bell Operating Company) competitors are, of course, always quick to propose regulations that apply only to their competitors, they never explain why, given the changing market conditions and the numerous protections already afforded in the Communications Act, the BOCs should continue to be saddled with archaic MFJ regulations designed for a pre-1996 Act world and marketplace.[1] The sole justification they offer is flawed market share data – specifically the claim that the BOCs continue to hold over 90% of the market for exchange and exchange access services. From that data, they ask the Commission to conclude that any and all regulations on the BOCs are warranted and, the more the better. Their argument is wholly lacking in merit and should be rejected.

As an initial matter, the market share data cited by Ascent, AT&T, and others is inaccurate. As shown in the *UNE Fact Report 2002,* submitted by BellSouth, SBC, Qwest, and

[1] Throughout these comments, the Communications Act of 1934 (as amended) is referred to as the Communications Act, and the Telecommunications Act of 1996 is referred to as the 1996 Act or Act.

Verizon in the *Triennial Review* proceeding, the Competitive Local Exchange Carriers' (CLECs') share of access lines in BOC regions is at least 16%, and likely closer to 20%.[2] Even that number, however, grossly understates the extent to which local markets are open. As the Commission and more recently the District of Columbia Circuit Court of Appeals has recognized, local rates for many customers in many areas continue to be priced under cost. Not surprisingly, CLECs have no interest in serving such customers (except to the extent states try to create what the D.C. Circuit characterized as "synthetic competition" by setting rates for the unbundled network element platform (UNE-P) so low as to create a margin even for these under-water customers – a practice to which states increasingly are turning).[3] Thus as a percentage of the access lines they *seek* to serve, the CLECs' market share is actually much higher than 20%. In any event, market shares, even if properly calculated, are irrelevant to the issues in this proceeding. The Commission does not grant the BOCs' long distance authority unless and until it concludes that local markets in the state in question are irreversibly open to competition. In making this determination the FCC has specifically rejected the market share test because it recognized that market shares are a result of CLEC business strategies and not necessarily within the control of the BOC. If market shares are not relevant to a determination of open markets, they are even less relevant to whether archaic MFJ obligations should be removed.

Second, claims regarding BOCs' ability and incentives to discriminate are grossly exaggerated. In today's competitive market, BOCs have an incentive to build on the goodwill of their local exchange customers, not to destroy it. Discriminating against competing long distance providers would cause the BOC to lose the goodwill of its customers. For one thing, for discrimination to be effective, it has to alter customer purchasing decisions. There is no point

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[2] *UNE Fact Report 2002,* prepared for and submitted by BellSouth, SBC, Qwest, and Verizon, April 2002, CC Docket Nos. 01-338 96-98, and 98-147, at I-6-7. *See id.* at Appendix A for explanation of why this data is necessarily more accurate than the data in the FCC's February 2002 *Local Telephone Competition Report.*

[3] *United States Telecom Assoc., et al. v. FCC*, Nos. 00-1012, Consolidated with 01-1075, 01-1102, 01-1103, No. 01-1015, Consolidated with 00-1025, 2002 U.S. App. LEXIS 9834 (D.C. Cir., May 24, 2002) (*UNE Remand/Line Sharing Appeal*).

to discrimination that is indiscernible to customers. But if discrimination is evident to customers, it will be more than obvious to the carriers that are the victims of discrimination. For this reason alone, claims regarding the risks of discrimination are wildly exaggerated. But there are other reasons why such claims do not withstand scrutiny. Unlike when the equal access regime was put in place, customers now have twenty years of experience with a competitive long-distance industry. They have a history with carriers, such as AT&T, WorldCom, and Sprint and know that these carriers and numerous others offer high quality service and seamless connections. Were that suddenly to change, there is no reason to believe that customers would attribute the decline in service quality to their long-distance carrier. They might well assume it to be the fault of the BOC itself – particularly if such change followed on the heels of BOC long-distance entry. Moreover, unless the discrimination were so rampant that large numbers of customers knew that the BOC offered superior service to itself – in which case, the discrimination would surely be detected – there is no reason to assume that a customer, dissatisfied with its long-distance service, would switch to the BOC. The customer could just as easily switch to one of the hundreds of other long-distance carriers that offer competitive long-distance service. Thus, competitors' ostensible fears of discrimination are more theoretical than a real world possibility.

Finally, even assuming, *arguendo*, that competitors have the ability and incentive to discriminate, AT&T and others still have offered no justification why the MFJ requirements are necessary to prevent discrimination. The Communications Act is literally sprinkled with provisions that give regulators the power to address unlawful discrimination, should it occur. These provisions include, not only §§ 201 and 202, but new sections that were enacted in 1996.

For example, even after the BOCs receive §271 authority by showing that their markets are irreversibly open to competition, they remain subject to § 272 which, *interalia*, imposes strict nondiscrimination and parity requirements on the BOCs in the provision of services to themselves and to unaffiliated entities. Further, § 251 imposes on BOCs and other local exchange carriers nondiscrimination requirements in connection with interconnection, dialing parity, and number portability obligations. And, of course, §§ 201 and 202 require carriers,

including local exchange carriers, to offer services on rates, terms and conditions that are just and reasonable and not unreasonably discriminatory.

AT&T and others never wrestle with the issue of why all these safeguards are insufficient to protect them against discrimination. The reason is simple: their agenda here is not to prevent discrimination, but to obtain a leg up in the marketplace. Specifically, the real reason AT&T and others seek to retain the equal access and nondiscrimination safeguards is that they want to be the only entities able to offer their customers the full benefits of joint marketing and bundled packages of services. They offer no explanation why similar marketing and packages offered by the BOCs would be injurious to the interests of consumers and contrary to the goals of the 1996 Act. They simply ask the Commission to conclude from their flawed market share data that this is so. But one of the primary goals of the 1996 Act was to bring the benefits of such packages to all customers and ensure that *all* carriers can offer such packages to their subscribers. Indeed, that is why the Act imposed symmetrical restrictions on joint marketing on the BOCs and the large IXCs. The Commission should reject the self-serving arguments and needless rhetoric of BOCs' competitors and eliminate archaic MFJ regulations that are no longer necessary.

II. COMPETITORS' ARGUMENTS ABOUT THE BOCS' MARKET SHARES ARE MISLEADING AND IRRELEVANT

Ascent, AT&T, and others argue that the MFJ restrictions are necessary because BOCs, allegedly with more than 90% of the share of the local market, have the ability to discriminate against their competitors.[4] There are two fundamental problems with this argument. First, any contention that BOCs retain a market share in excess of 90% is demonstrably false and misleading. As SBC demonstrated in the *UNE Fact Report 2002,* CLECs have acquired at least 16%, and more likely about 20%, of the BOCs' switched access lines.[5] But market shares

[4] Comments of ASCENT, CC Docket No. 02-39 at 3 (May 10, 2002); Comments of AT&T, CC Docket No. 02-39 at 18 (May 10, 2002.)

[5] Comments of ASCENT, CC Docket No. 02-39 at 3 (May 10, 2002); Comments of AT&T, CC Docket No. 02-39 at 18 (May 10, 2002.)

defined in terms of access lines do not even begin to tell the whole competition story. As this Commission is well aware, CLECs have no interest in serving large portions of the local market because local retail rates for residential customers in many areas remain below cost, there is no money to be made there. Instead, they are intent on cream-skimming. While their overall market share is close to 20%, their share of the customers they are interested in serving is substantially higher. When the market is viewed in terms of CLEC revenues, it is obvious that the CLECs have a much stronger market position than they would lead one to believe.[6]

Moreover, in states where the Commission has granted the BOCs' long distance authority, it has concluded that local markets are fully and irreversibly open to competition. While AT&T and others argue that even in those states, CLECs' market shares are low, they ignore the fact that both the Department of Justice and this Commission specifically rejected the market share test in making their determination. Thus, the Department of Justice observed:

> [W]e do not regard competitor's small market shares, or even the absence of entry, standing alone, as conclusive evidence that a market remains closed to competition . . . . a BOC's entry into interLATA services should not be delayed because of the independent business strategies of its competitors." [7]

Similarly, while approving BellSouth's long distance application for Georgia and Louisiana, this Commission recently stated:

> Given an affirmative showing that the competitive checklist has been satisfied, low customer volumes or the financial hardships of

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[6] BOCs' competitors appear to argue that market share equates with market power. This argument is clearly wrong. As Judge Greene stated, "size alone is not synonymous with market power, particularly where entry barriers are not substantial." *United States v. AT&T*, 552 F.Supp. 131 (D.C.C. 1982) (*MFJ*).

[7] Evaluation of the United States Department of Justice*, In re: Second Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana*, CC Docket No. 98-121 (Aug. 19, 1998) (*DOJ LA II Evaluation)*.

> the competitive LEC community do not undermine that showing. We have consistently declined to use factors beyond the control of the BOC, such as a weak economy, or over investment and poor business planning by competitive LECs to deny an application.[8]

If market shares are not determinative of an "open market" they are even less determinative of whether antiquated MFJ restrictions should be removed. The appropriate test here is not whether CLECs have achieved a certain market share but whether the equal access requirements remain necessary and appropriate after nearly twenty years of long-distance competition, during which time customers have become well aware of their long-distance options, in the context of local markets that are "irreversibly open to competition,"[9] and given the various statutory provisions that already address and proscribe discrimination. The answer clearly is no. As noted in SBC's comments, the Commission has long held that the interexchange and information services markets are competitive. Where there were once a handful of interexchange carriers, there are now over 800. The MFJ-era concern, that customers would not be aware of their IXC and ISP choices, is hardly an issue today. Moreover, the MFJ-era assumption — that BOCs maintained "bottleneck control" over the local exchange — has been superceded by the market opening provisions of the 1996 Act and technological changes pursuant to which wireline telephone service is being displaced by wireless and Internet telephony services. In light of these marketplace developments, there is no basis for retaining the equal access and nondiscrimination requirements, which were designed for a different time and marketplace conditions.

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[8] *Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services In Georgia and Louisiana*, CC Docket No. 02-35, *Memorandum Opinion and Order*, FCC 02-147 at ¶ 282 (May 15, 2002).

[9] It should go without saying that equal access requirements are completely unnecessary in states in which BOCs are not providing long-distance service. The original purpose of those requirements – ensuring that the BOCs did not discriminate in favor of AT&T's long-distance operations – has long been satisfied. No serious claim can be made that BOCs have incentives to discriminate among and between unaffiliated long-distance providers.

III. COMPETITORS' CLAIMS AS TO BOC INCENTIVES TO DISCRIMINATE ARE GROSSLY EXAGGERATED

AT&T and others also make much of the fact that in this changing marketplace BOCs will have an "incentive" to discriminate in favor of their own long distance affiliates. They believe that the MFJ restrictions should be retained because they will serve as an effective check on the BOCs' incentive to discriminate.[10] These claims are over exaggerated.

As an initial matter, competitors ignore the reality of real world business. In today's market, all carriers, including the BOCs, have to build upon customer goodwill, not destroy it. Any attempt by a BOC to provide inferior service to other interexchange carriers — thereby creating inferior service for its local exchange customers — is more likely to alienate local exchange customers rather than win new interexchange customers. Further, even if a BOC did discriminate, the BOC could not be sure that it would derive any benefit from the discrimination. For one thing, a customer (especially one prompted by its long distance carrier, which may well have an affiliated local exchange carrier of its own) might well assume that the BOC caused the poor service. Even if the customer does not blame the BOC for the service problems, there is no reason to assume that the customer would switch its long distance service to the BOC affiliate. There are over 800 interexchange carriers offering service today, large numbers of which compete in any given state. A customer dissatisfied with WorldCom, for example, would be just as likely to switch to AT&T, Sprint, or one of the other carriers serving that marketplace as it would a BOC affiliate. Only if the general public was aware that the BOC discriminated against all carriers vis-à-vis the BOC's own affiliate would customers be incented to switch to the BOC affiliate. If customers were aware of such widespread discrimination, surely it would be apparent to competitors and to regulators.

The Department of Justice recognized this when it stated: "[D]iscrimination is unlikely to be effective unless it is apparent to customers. But, if it is apparent to customers, it is also likely

[10] ASCENT Comments at 11-12; AT&T Comments at 18-23; WorldCom Comments at 4; General Communication Inc., Comments at 10; CC Docket No. 02-39 (May 10, 2002).

to be apparent to regulators or to competitors that could bring it to the regulators' attention."[11] Thus, as a practical matter, there is little risk of discrimination against competitors.

IV. COMPETITORS ARE UNABLE TO EXPLAIN WHY MFJ REGULATIONS ARE STILL NECESSARY GIVEN ALL THE OTHER PROTECTIONS IN THE COMMUNICATIONS ACT

As stated above, claims regarding the risk of discrimination are grossly overstated. Even assuming, *arguendo*, that there is a risk of discrimination as AT&T and others claim, they fail to explain why the many safeguards in the Communications Act do not adequately protect against such discrimination. By focusing on BOC incentives and giving short shrift to all the statutory and regulatory protections in the Communications Act, they lose sight of the real question in this proceeding; that is, whether the MFJ regulations are still necessary.

When one poses the right question, the answer is crystal clear. The Congress devised an elaborate scheme for equal access and nondiscriminatory safeguards under the 1996 Act. As an initial matter it ensured that BOCs could not even enter the interLATA long distance market until they could prove, through a 14-point competitive checklist and a public interest test that they had "irreversibly opened" the market to competition. The last six years are proof that this is no easy task.

In the process of meeting the 14-point checklist and the public interest test required for approval under § 271, BOCs have spent innumerable resources negotiating, *interalia*, interconnection arrangements, collocation procedures, pricing of unbundled network elements, and performance measures to ensure parity performance for CLECs. Additionally, they have spent billions of dollars to ensure, not only that existing orders flow efficiently through their systems, but also that the systems could handle large scale residential orders in future. And

[11] Report and Recommendations of the United States Concerning the Line of Business Restrictions Imposed on the Bell Operating Companies by the Modification for Final Judgement, filed Feb 3, 1987 at 96. SBC does not disagree with the Commission's conclusion in the Interconnection Order that there may be forms of discrimination that are imperceptible to end users. Interconnection Order at ¶ 224. However, such types of discrimination would not lead to the acquisition of market power. Only discrimination that affects the purchasing decisions of large numbers of customers could confer market power.

BOCs' systems have been subjected to two to three years of testing by independent auditors including oversight by state and federal regulators to prove their capabilities. Despite all these efforts, BOCs are permitted to provide in-region interLATA long distance services in only 13 of the 50 states today. And even in those states where BOCs have received § 271 authority, the Commission will scrutinize the BOCs' performance to determine if they continue to meet their § 271 obligations.[12]

Moreover, even after BOCs receive their § 271 authority, they can only provide long distance services through a structurally separate § 272 compliant affiliate for a minimum of three years.[13] And there are stringent nondiscrimination requirements imposed on the BOCs pursuant to § 272(c) and (e) of the 1996 Act. The Commission has already stated that the requirements of § 272(c) impose an "unqualified" prohibition against discrimination, and this prohibition extends to *all* services, not just telecommunications services.[14] Further, BOCs are subject to a biennial audit to ensure compliance with the nondiscrimination and other provisions of § 272. Even after the structurally separate affiliate is no longer required, nondiscrimination safeguards under § 272(e), which require parity performance and imputation of access charges, continue to apply to BOCs. And BOCs, along with other ILECs, are subject to the interconnection, dialing parity, number portability and other nondiscrimination provisions of §§251 and 252 of the Act. If these protections are not sufficient, the Commission has ample authority under §§ 201 and 202, to address discrimination concerns.

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[12] *FCC's Enforcement Bureau Establishes Section 271 Compliance Review Program*, Public Notice, DA 02-1322 (June 6, 2002).

[13] Pursuant to § 272(f)(1), this requirement sunsets after three years, unless the Commission extends the 3-year period by rule or order. The Commission has recently issued an NPRM regarding the sunset provision. *Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements*, WC Docket No. 02-112, *Notice of Proposed Rulemaking*, FCC 02-148 (May 24, 2002).

[14] *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended*, CC Docket No. 96-149, *First Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rcd 21905, at ¶¶ 197, 217 (1996) (*Non-Accounting Safeguards Order*).

BOC competitors have completely side stepped the issue of why, despite all the above protections, the Commission needs to preserve archaic MFJ protections. AT&T admits that the 1996 Act protects against discrimination by the BOCs, but argues that there are gaps in the protections. In particular, it argues that the above provisions do not address critical issues like joint marketing and that retention of the MFJ requirements is therefore necessary.[15] AT&T's claim is a red herring. In the first place, whether the BOC can provide marketing services to its affiliate without providing the same to other IXCs is not an MFJ issue; the MFJ Court never envisioned the BOCs' provision of long distance services. Rather, it is a quintessential 1996 Act issue and falls clearly under § 272 of the 1996 Act. Second, as SBC stated in its comments, any general nondiscrimination requirement that may have applied to joint marketing has already been explicitly superseded by § 272(g) of the 1996 Act. Section 272(g) is clear on its face and permits BOCs to "market and sell" their products with those of their long distance affiliates on an exclusive basis. The legislative history of § 272(g), although scant, sends two equally clear messages: (1) that joint marketing is a critical marketing tool; and (2) there consequently must be "parity among competing industry sectors" in the rules that apply.[16] Thus, Congress clearly intended that BOCs, once they received § 271 authority, would be able to bundle their local and long distance services without restrictions just like their competitors.[17] In seeking to strip the BOCs of this statutory right and deny customers the ability to obtain desirable service packages

[15] AT&T Comments, CC Docket No. 02-39 at 3 (May 10, 2002). AT&T also argues for continuation of MFJ regulations because the interconnection mandate under section 251(c) do not include access services such as routing, transport, and termination of traffic. *Id*. at 22. However, the provision of access services will continue to be subject to the requirements of §§ 201 and 202. In addition, the Commission has proposed major reforms of the access charge regime in the pending Intercarrier Compensation Proceeding. *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Notice of Proposed Rulemaking, FCC 01-132 (rel. April 27, 2001) (*NPRM*).

[16] S. Conf. Rep. No. 104-230, at 23.

[17] The language of § 272(g) is broad and clearly permits both inbound and outbound marketing, the use of local bills for advertising long distance services, and discounts on local service in return for signing up for interexchange service. Additionally, contrary to the Commission's decision in the *Non-Accounting Safeguards Order*, it permits product development and post-sale customer care. Without these freedoms, the joint marketing authority is meaningless.

from the BOCs, AT&T and others simply want to retain a competitive advantage in the long-distance market. But competitive battles should be played out in the marketplace, not regulatory arenas. Despite all their usual rhetoric, these carriers are wholly unable to explain why continued restrictions on BOCs' joint marketing are necessary or appropriate or how such restrictions could be squared with the language and intent of § 272(g).

V. EQUAL ACCESS AND NONDISCRIMINATION OBLIGATIONS SHOULD APPLY EQUALLY TO ALL LECS

Not surprisingly, AT&T argues that it would be "irrational" to extend the equal access and nondiscrimination requirements to it.[18] Although SBC agrees that it is irrational to preserve MFJ requirements at all, SBC believes that it is essential for this Commission to ensure similar treatment of all competitors. Because of the unequal treatment provided to BOCs by MFJ and other regulations, BOCs are forced to compete with one hand tied behind their backs. Such unequal treatment can no longer be rationalized.

At the time of the MFJ, few customers were aware of any long-distance provider other than AT&T. The situation today, however, is far different. Carriers like WorldCom, Sprint, and others have spent billions of dollars advertising their services and building customer goodwill. Customers today are well aware that they have a choice of long-distance providers and that they can receive high quality service from any number of providers. There is thus no longer any need for equal access requirements adopted eighteen years ago, to ensure that customers have the opportunity to make informed choices. Indeed, it is the BOCs that today are the new entrants in the long-distance market. It is the BOCs' service of which customers may be unaware.[19] Thus, restricting the BOCs' marketing of their own long-distance service, but not imposing any restrictions on the more familiar competitive offerings is irrational.

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[18] AT&T Comments at 43.

[19] Despite the fact that BOCs are the new entrants in the long distance market, they are required to read a list of other long distance carriers pursuant to MFJ obligations. SBC estimates that this requirement costs it about $10 million annually. To continue this requirement in the face of changing market conditions is irrational.

Nor is it appropriate to restrict the ability of the BOCs — and only the BOCs — to offer customers the bundled service packages customers want and demand. The BOCs' competitors routinely offer local/long-distance packages to customers — in some cases combining those packages with other services as well, including but not limited to, high speed Internet access services. Indeed, one of the principal purposes of the 1996 Act was to enable the type of cross-pollenization that would permit these types of offers. Denying BOCs the ability to offer packages of services on an exclusive basis – and denying customers the ability to receive such packages – does not promote competition or benefit customers; it benefits individual competitors at the expense of real competition and customers. SBC believes that restricting the ability of carriers in today's market to deliver the service packages that customers want is contrary to the public interest. Nevertheless, to the extent the Commission imposes any such restrictions on the BOCs, it should impose those same restrictions on all carriers. Asymmetric regulation necessarily distorts the operation of competitive markets and imposes real social costs. The Commission has long recognized these costs and insisted that markets, not regulators, should dictate winners and losers. The costs of any decision to retain joint marketing restrictions should not be compounded by the market distortions of asymmetrically applied restrictions. Thus to the extent the Commission retains such restrictions – or any other equal access requirements – it should apply those restrictions or requirements to all carriers.

VI. THE COMMISSION SHOULD REMAIN FAITHFUL TO THE DEREGULATORY OBJECTIVES OF THE 1996 ACT.

As discussed in BOCs' comments, the old MFJ obligations no longer continue to serve any purpose. Many of them have been superseded by statutory obligations and are simply redundant. Others affirmatively impede competition and deny customers the full benefits of the 1996 Act. To continue to impose these obligations on the BOCs is completely inconsistent with the purpose of the 1996 Act.

As the Congress noted, the overriding goal of the Act is to "provide for a pro-competitive, *de-regulatory national policy framework* designed to accelerate rapidly the deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition."[20] Chairman Powell, emphasizing the need to remove unnecessary obligations, has also stressed the need to pursue deregulation "in its own right." Thus, he stated: ".. continued regulation imposes a direct opportunity cost on the competitive process, one that is difficult to quantify but equally difficult to ignore."[21]

Despite clear direction from the Act and this Commission, BOC competitors argue that the MFJ regulations should not only be preserved, but expanded.[22] This "more is better" approach is wholly unsubstantiated and directly contrary to the deregulatory purposes of the Act. Six years after the Act, and almost twenty years after the MFJ, there is no reason to preserve redundant and superfluous obligations on the BOCs.[23]

It is imperative that this Commission eliminate archaic MFJ obligations. In particular, the Commission should clarify that BOCs' may offer bundled packages of services with no

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[20] Joint Manager's Statement, S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess. 125 (1996) (Joint Explanatory Statement).

[21] Michael K. Powell, Commissioner, Federal Communications Commission, Address before The Federal Communications Bar Association (New York Chapter) "Somewhere Over the Rainbow: The Need for Vision in the Deregulation of Communications Markets" (May 27, 1998).

[22] Competitors want this Commission to institute a rulemaking on Third Party Administrator and CARE issues. AT&T Comments at 23-39. These issues relate to concerns about slamming and cramming and the BOCs' ability to 'freeze' the customer's choice of long distance carriers. These are not historical MFJ issues; in fact, issues relating to slamming, etc., merely demonstrate how the market has changed since the days when BOCs were first required to read to customers their available choices of long distance carriers. The appropriate focus and remedy in this docket should be to eliminate scripting and other MFJ requirements that are either redundant or affirmatively impede competition. It is not to regurgitate issues relating to separate proceedings. The third party administrator and CARE issues are being considered in other Commission dockets under the 1996 Act and it is unnecessary to institute additional proceedings to address those issues.

[23] For all the same reasons, it is unnecessary to preserve any of the equal access and nondiscrimination obligations that were imposed on independent LECs.

restrictions just as their competitors do today. As SBC explained in its comments, the combined packaging of services is at the heart of all competitive residential offers and the BOCs must be permitted to compete in this market freely. Anything short of an expeditious resolution of that issue will unfairly disadvantage the BOCs' competitive offerings and deprive customers of free and fair competition. As Chairman Powell has said, "Policymakers must find the courage to release the reins of regulation and let competition roam free."[24]

VII. CONCLUSION

For all the reasons stated above, this Commission should eliminate archaic MFJ requirements and hold that existing regulations are more than adequate to address the concerns of its competitors.

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[24] Michael K. Powell, Commissioner, Federal Communications Commission, Address before The Federal Communications Bar Association (New York Chapter) "Somewhere Over the Rainbow: The Need for Vision in the Deregulation of Communications Markets" (May 27, 1998).

CERTIFICATE OF SERVICE

I, Lacretia Hill, do hereby certify that on this 10th day of June a copy of the foregoing "Reply Comments " of SBC Communications Inc. was served by U.S. first-class mail, postage paid to the parties on the attached sheets.

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